

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CLOANTO CORPORATION, a Nevada
Corporation

Plaintiff,

vs.

HYPERION ENTERTAINMENT C.V.B.A.,

Defendant.

No. 2:18-cv-00535-JLR

DECLARATION OF ROBERT J.
CARLSON IN SUPPORT OF
DEFENDANT'S MOTION TO
CONSOLIDATE

1. My name is Robert J. Carlson. I am one of the attorneys for the Defendant in
2 this action, Hyperion Entertainment C.B.V.A. ("Hyperion"), and I am over the age of 18
3 years and otherwise competent to testify as to the matters set forth herein.

2. I also serve as one of the attorneys for Hyperion in another action currently
3 pending in this District, Case No. 2:18-cv-00381-RSM, *Hyperion Entertainment C.V.B.A. v.*
4 *Itec, LLC, Amiga, Inc., Amino Development Corp., and Cloanto Corporation*. I will refer to
5 that action as the 381 action.

1 3. Hyperion's predecessor, Hyperion VOF, was named as a defendant in an action
 2 filed in the Western District of Washington in 2007 by Amiga, Inc., styled as *Amiga, Inc. v.*
 3 *Hyperion VOF*, No. 2:07-cv-00631-RSM. The presiding judge in that action was the Hon.
 4 Ricardo S. Martinez. That action was resolved by a Stipulated Judgment based on a
 5 Settlement Agreement; the Stipulated Judgment was entered December 14, 2009.

6 4. The Settlement Agreement recites that the parties to the Agreement are
 7 Hyperion, on the one hand, and Itec, LLC, Amiga, Inc., and Amino Development Corp. (the
 8 "Amiga Parties") on the other hand; these are the same parties named in the 381 action.

9 5. Among other rights and obligations set forth in that Settlement Agreement,
 10 Section 1 provides that the Amiga Parties grant Hyperion certain intellectual property license
 11 rights in software, copyrighted materials, and trademarks. The Stipulated Judgment,
 12 including the Settlement Agreement, is attached as Exhibit 1 to Hyperion's Complaint in the
 13 381 action.

14 6. The 381 action includes allegations that the Amiga Parties are in breach of
 15 their obligations under the Settlement Agreement, asserts that Hyperion's rights under the
 16 Settlement Agreement are material to resolution of Cloanto's claims against Hyperion in this
 17 535 action (which at that time was pending in the Northern District of New York) and seeks
 18 Declaratory Judgment as to respective rights asserted by Hyperion and Cloanto in software,
 19 copyrighted materials, and trademarks.

20 7. Cloanto's First Amended Complaint in this 535 action, Dkt. # 29, includes
 21 allegations of copyright infringement, trademark infringement, unfair competition and other
 22 equitable relief, some or all of which are related to software, copyrighted materials, and
 23 trademarks that were the subject of the Settlement Agreement. Cloanto's Amended
 24 Complaint recites numerous allegations of fact representing Cloanto's own view of
 25 Hyperion's rights under the Settlement Agreement, in paragraphs 24-37 of the Amended
 26 Complaint, Dkt. # 29 at pp. 6-9.

8. As a result, I believe the 381 action and this 535 action involve numerous common questions of law and fact within the meaning of Rule 42 of the Federal Rules of Civil Procedure.

9. As counsel for Hyperion, I have complied with the meet and confer requirement set forth in LCR 42(b). Specifically, I have had telephone conversations and e-mail exchanges with local counsel for Cloanto, and provided a proposed Stipulated Motion to consolidate. During the recent INTA Meeting, on May 21, 2018, I met in person with Cloanto counsel Gordon Troy, as well as counsel representing Itec, LLC, in a meeting at my firm's offices. In addition to discussing potential settlement options, I discussed consolidation of the 381 and 535 actions with counsel for those parties.

10. Counsel representing Itec, LLC have not yet entered an appearance in the 381 action, but have generally indicated that Itec would not oppose consolidation. Neither of the other two Amiga Defendants (Amiga, Inc. and Amino Development) have entered an appearance in the 381 action. Counsel for Cloanto have indicated that Cloanto would be open to consolidation, but we have not been able to reach a specific stipulation.

11. The parties have not yet filed a joint status report in either the 381 or 535 action, and no scheduling order has entered in either action.

I declare under penalty of perjury under the laws of the United States that to the best of my knowledge, information and belief, the foregoing statements are true, and as to statements of belief, that I believe them to be true.

Executed at Seattle, Washington this 10th day of July 2018.

By: s/ Robert J. Carlson

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July 2018, I caused to have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

gtroy@webtm.com

mike@atkinsip.com

By: s/ Robert J. Carlson

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